CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 173

IRVING TRUST COMPANY, AS TRUSTEE IN BANKRUPTCY OF SARNOFF-IRVING HAT STORES, INC., BANKRUPT, PETITIONER,

vs.

INGERSOLL BOWDITCH, STEPHEN W. SLEEPER AND FRANCIS H. APPLETON, JR., TRUSTEES OF THE REAL ESTATE ASSOCIATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED JULY 16, 1934.

CERTIORARI GRANTED OCTOBER 8, 1934.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 173

IRVING TRUST COMPANY, AS TRUSTEE IN BANKRUPTCY OF SARNOFF-IRVING HAT STORES, INC., BANKRUPT, PETITIONER,

vs.

INGERSOLL BOWDITCH, STEPHEN W. SLEEPER AND FRANCIS H. APPLETON, JR., TRUSTEES OF THE REAL ESTATE ASSOCIATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original	Print
Record from D. C. U. S., Southern New York	1	1
Objection to claim	1	1
Proof of claim	2	1
Exhibit "A"—Statement as to claim	5	3
Indenture of lease, Nov. 7, 1925	6	4
Amended proof of claim	17	11
Exhibit "A"—Statement as to claim	20	13
Notice of hearing	22	15
Extract from minutes of hearing	23	15
Memorandum of referee	26	17
Order of referee	27	18
Notice of filing petition for review	28	18
Petition for review	30	19
Order of referee (copy) .... (omitted in printing) ..	33	
Certificate of referee	35	21
Memorandum, Coxe, D. J.	38	23

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 12, 1934.

—5498-C.

	Original	Print
Order appealed from	38	23
Notice of appeal	40	24
Petition for appeal	42	25
Allowance of appeal	43	26
Assignment of errors	44	26
Citation (omitted in printing)	45	
Stipulation as to transcript of record	47	27
Clerk's certificate (omitted in printing)	48	
Proceedings in U. S. C. C. A., Second Circuit	49	28
Decision	49	28
Order for mandate	50	28
Clerk's certificate (omitted in printing)	51	
Order allowing certiorari	52	29

[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

In the Matter of SARNOFF-IRVING HAT STORES, INC., Bankrupt

OBJECTION TO CLAIM

To Hon. Oscar W. Ehrhorn, Referee in Bankruptcy:

Irving Trust Company, Trustee in Bankruptcy herein, does hereby object to the claim filed herein by Real Estate Associates, in the sum of $4,418.04, upon the ground that the indebtedness of the bankrupt to the said claimant is but the sum of $1,086.27.

The Trustee in Bankruptcy therefore prays that an order be entered reducing the said claim from the sum of $4,-418.04 to $1,086.27.

Dated, New York, April 27th, 1933.

McManus, Ernst & Ernst, Attorneys for Trustee, Office & P. O. Address: 170 Broadway, Borough of Manhattan, New York City.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PROOF OF CLAIM

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At the above District in the County of Suffolk, Commonwealth of Massachusetts, on the date hereinafter set forth, came Stephen W. Sleeper and makes oath and says:

I am one of the Trustees of the Real Estate Associates, a voluntary association having its usual place of business at Boston in said County of Suffolk and said Commonwealth; I reside at Boston in the County of Suffolk and said Commonwealth; I am duly authorized to make this proof of

claim on behalf of myself and Ingersoll Bowditch of said Boston, as Trustee of said Real Estate Associates, and as such trustees we are the claimants; the above named bankrupt was at and before the time of the filing of the petition in bankruptcy herein and still is, justly and truly indebted to the claimants in the sum of Forty-four Hundred Eighteen and 04/100 Dollars ($4418.04); the consideration of said [fol. 3] debt is rent of and charges for electricity consumed at the store numbered 102 Hanover Street in said Boston under the terms of Indenture of Lease dated November 7, 1925, annexed hereto, and for liquidated damages for breach of covenant contained in said Indenture of Lease, namely,

"and for the more effectual securing to the Lessor of the rent and other payments herein provided, it is agreed as a further condition of this lease that the filing of any petition in bankruptcy or insolvency by or against the Lessee, or either or any of them, shall be deemed to constitute a breach of this lease, and thereupon, ipso facto and without entry or other action by the Lessor, this lease shall become and be terminated; and notwithstanding any other provisions of this lease the Lessor shall forthwith upon such termination be entitled to recover of the Lessee and each of them damages for such breach in an amount equal to the amount of the rent reserved in this lease for the residue of the term hereof, less the fair rental value of the demised premises for the residue of said term."

that the annexed statement marked "Exhibit A" sets forth in full the amount of the claimants' claim for which this proof is made; no part thereof has been paid; there are no offsets or counter claims thereto; the claimants have not nor has any person for or on behalf of the claimants, or to the deponent's knowledge or belief, had or received, for the use or benefit of the claimants, any security for [fol. 4] said debt; no judgment has been rendered therefor or for any part thereof; no note or other evidence of said debt has been received.

In executing and filing this proof of claim, the claimants in no way waive any rights which the claimants may have to reclaim specific assets and expressly reserve such rights. The claimants appoint Honorable Oscar W. Ehrhorn, Referee, proxy and attorney in fact, with full power to substitute in his place any other Referee acting in connection

with the bankrupt estate and authorize him or his substitute in the name and on behalf of the claimants to vote at the first or any subsequent meeting or meetings of creditors, or at any adjournments thereof, in favor of the election of the Irving Trust Company as Trustee of the bankrupt's estate, as fully as the claimants could do if present. Said attorney shall have no other authority or power to act for the claimants. All powers of attorney heretofore executed by the claimants in this proceeding, insofar as they authorize any person or persons to vote on the claimants' behalf in the choice of a Trustee, are hereby revoked.

Trustees of the Real Estate Associates, by Stephen W. Sleeper.

Subscribed, sworn to and acknowledged before me this ninth day of September, 1932, said subscriber being known to me to be the person described in and who signed, swore to and acknowledged the above instrument.

Clarence William Lowd, Notary Public.

[fol. 5] EXHIBIT "A" TO PROOF OF CLAIM

(1) Rent of store numbered 102 on Hanover Street, Boston, from March 1 to April 27, 1932, inclusive, under said indenture of lease	$791.67
(2) Charges for electricity furnished to and consumed at said premises from February 20 to April 27, 1932, in accordance with the provisions of said indenture of lease	173.61
(3) Liquidated damages in accordance with the above quoted provision of said indenture of lease computed as follows:	
(a) Rent reserved under said indenture of lease as amended by agreement made November 28, 1931, at the rate of $5,000 per year, as follows:	
July 18 to 31, 1932	$180.55
Aug. 1 to Dec. 31, 1932	2,083.30
For the year 1933	5,000.00
" " " 1934	5,000.00
" " " 1935	5,000.00
Total	$17,263.85

(b) Rental value of said premises at the rate of $4,000 per year from July 18, 1932, to expiration of lease, December 31, 1935, as follows:

[fol. 6] July 18 to 31, 1932	$144.44	
Aug. 1 to Dec. 31, 1932	1,666.65	
For the year 1933	4,000.00	
" " " 1934	4,000.00	
" " " 1935	4,000.00	
Total	13,811.09	
Liquidated damages		3,452.76
(4) Grand Total		$4,418.04

(Note.—The Receiver appointed by the Bankruptcy Court occupied said premises from April 27, 1932 to July 18, 1932, and duly paid for such occupancy.)

Lease

This indenture, made the Seventh day of November, in the year nineteen hundred and twenty-five, between Trustees of Real Estate Associates (hereinafter called the Lessor) of the one part, and Sarnoff-Irving Hat Stores, Incorporated, of New York City, (hereinafter called the Lessee) of the other part.

Witnesseth: That the Lessor doth hereby demise and lease unto the Lessee the following premises (hereinafter called the demised premises) to wit:

Store without basement #102 Hanover Street, Boston, Mass., with heat to warm said premises during reasonable [fol. 7] business hours, during the cold season of each year as hereinafter provided.

The Lessee agrees to conform to rules and regulations now or hereafter established by the Lessor for the general comfort and convenience of the tenants in the building #104 Hanover Street, Boston, Massachusetts.

The Lessee agrees to purchase from the Lessor, while he is willing and able to furnish such service, electricity for power or light in the leased premises to be measured by a meter to be furnished and installed by the Lessor and to

pay for the same, at the time herein specified for the payment of rent, and the rates charged by the Edison Electric Illuminating Company of Boston or its successors for similar service.

To have and to hold the demised premises unto the Lessee during the full term of Ten (10) years beginning with the First day of January, in the year nineteen hundred and twenty-six.

Yielding and paying therefor as rent, the sum of $6500 per annum for the 1st five (5) years & $7000—per annum for the last five (5) years, by equal monthly payments of one-twelfth of said annual rent in advance on the first day of each month, and at that rate for fractions of a month, in every year during said term, the first payment to be made on the first day of January, A. D. 1926.

The Lessor shall not be liable to the Lessee or to anyone claiming under the Lessee for any interruption or failure of heat, light, elevator or any other service, in case the Lessor shall undertake to furnish heat, light, elevator or [fol. 8] any other such service, if such interruption or failure shall be due to any cause beyond the Lessor's control, or to any accident, or to the making of repairs, alterations or improvements, to labor difficulties, or to inability to obtain coal, electricity, supplies or service from the sources from which they are usually obtained for said building.

And the Lessee doth hereby covenant with the Lessor that the Lessee, during the said term and for such further time as the Lessee or any other person or persons claiming under the Lessee shall hold the demised premises or any part thereof, will pay unto the Lessor the said rent at the times and in the manner aforesaid, and will also pay as they shall become due and payable all rates and charges for the use of water, gas, electricity and other agencies used in and upon the demised premises.

The lessee hereby further covenants that the Lessee will save the Lessor harmless and indemnified from all loss and damage occasioned by the use or escape of water or other agency upon or from the demised premises, or by the bursting of the pipes, or by any nuisance made or suffered on the demised premises or caused by the Lessee in said building or on the approaches thereto; and will not assign this lease nor underlet the whole or any part of the demised premises without first obtaining upon each occasion the consent in

writing of the Lessor; and will not permit any hole to be drilled or made in any part of the demised premises or in the permanent construction of said building or any sign, placard, awning or the like to be placed, painted, or in any [fol. 9] manner displayed on or affixed to or upon the demised premises or said building except such and in such place and manner as shall have been first approved in writing by the Lessor; and will keep the demised premises and all pipes, wires, glass, plumbing and other fixtures therein or used therewith repaired, whole and of the same kind, quality and description and in such good repair, order and condition as the same are at the beginning of, or may be put in during, the term, damage by fire or other unavoidable casualty and reasonable wearing and use only excepted, the Lessee acknowledging that the aforesaid are now in good repair, order and condition; and will conform to all reasonable rules and regulations now or hereafter established by the Lessor for the care and use of the building and its facilities and approaches; and will not carelessly use or neglect the elevators, or obstruct with furniture, merchandise, rubbish or otherwise the skylights or windows in the demised premises or said building, or the entryways, elevators wells or staircases used in common with other occupants of said building; and will not permit employees to loiter about or obstruct the sidewalks, entryways or stairways, nor do or permit anything to be done on the premises which will in any way interfere with the rights of other tenants, if any, or conflict with the laws relating to fires, drains or plumbing, or the rules or ordinances of the city of Boston; and will keep the sidewalks adjacent to the demised premises free from snow and ice and all openings in the sidewalks in good repair; and at the expiration of the said term will remove the Lessee's goods and effects and those [fol. 10] of all persons claiming through or under the Lessee; and will peaceably yield up to the Lessor the demised premises, and all erections and additions made to or upon the same, in good repair, order and condition in all respects, damage by fire or other unavoidable casualty and reasonable wearing and use only excepted; and will hold the Lessor harmless and indemnified against any and all injury, loss or damage from any cause to any person or property upon or about the demised premises or while in transit thereto or therefrom upon the hallways, stairways,

elevators or other approaches to the demised premises; and will from time to time promptly and at the expense of the Lessee make such alterations and additions in and to the demised premises and do all such other things therein as may be required of the Lessee or of the Lessor by any laws, ordinances, regulations or orders of the Boston Board of Fire Underwriters or of any public authority applicable to the demised premises or to the use, occupation or maintenance of the same so that the demised premises shall conform thereto and be used, occupied and maintained in conformity therewith, and will save the Lessor harmless and indemnified from all cost and expense of any alterations or additions in or to any portions of said building not hereby demised and of other things so required because of the Lessee's use or occupation of the demised premises; and that during the said term, and such further time as aforesaid the demised premises or the hallways stairways, elevators or other approaches thereto or to said building, or any fixtures therein or used therewith shall not be overloaded, damaged or defaced; and no trade or occupation shall be [fol. 11] carried on upon the demised premises, or use made thereof which shall be unlawful, improper, noisy or offensive, or contrary to any law of the Commonwealth or ordinance or by-law for the time being in force of the City of Boston, or injurious to any person or property; and no act or thing shall be done upon the demised premises, which may make void or voidable any insurance of the demised premises or building against fire, or may render any increased or extra premium payable for any such insurance; and no addition or alteration to or upon the demised premises shall be made without the consent in writing of the Lessor; and that the Lessor, or the Lessor's agents, may, during the said term, at seasonable times, enter to view the demised premises, and may remove placards, signs, awnings, and the like not approved and affixed or placed as herein provided, and may show the demised premises and building to others, and at any time within three months next before the expiration of the said term may affix to any suitable part of the demised premises a notice for letting or selling, and keep the same so affixed without hindrance or molestation; and may enter the demised premises to examine any machinery, gas, water or steam pipes, or fixtures, or electric wires and fixtures (whether used in con-

nection with the demised premises or with other premises) and may maintain, repair and protect the same and may introduce additional machinery, pipes, wires or fixtures if the Lessor should elect so to do, and may make any repairs, alterations or additions which the Lessor may desire, but the Lessor is not to be required to make any repairs, alterations, additions, improvements or replacements of any kind [fol. 12] unless the Lessor elects so to do, and is not to be held to any covenant, agreement or representation, express or implied, that the demised premises are or will continue to be suited or fit for any particular use; and that any notice from the Lessor to the Lessee relating to the demised premises, or the occupancy thereof, shall be deemed duly served if left at the demised premises addressed to the Lessee.

Provided always that in case the demised premises or any part thereof, or the whole or any part of the building of which they are a part shall be taken for any street or other public use, or shall be destroyed or damaged by fire or other unavoidable casualty or by the action of the City or other authorities, or shall receive any direct or consequential damage for which the Lessor and/or the Lessee shall be entitled to compensation by reason of anything lawfully done in pursuance of any public authority, after the execution hereof and before the expiration of the said term, then this lease and the said term shall terminate at the election of the Lessor, and such election may be made in case of any such taking, notwithstanding the entire interest of the Lessor may have been divested by such taking; and if the Lessor shall not so elect, then in case of any such taking or destruction of, or damage to, the demised premises, rendering the same or any part thereof unfit for use and occupation, a just proportion of the rent hereinbefore reserved, according to the nature and extent of the injury sustained by the demised premises, shall be suspended or abated until the demised premises, or in case of such taking, what may [fol. 13] remain thereof, shall have been put in proper condition for use and occupation. The Lessor reserves and excepts from this lease all rights to damages to the demised premises or any part thereof or the leasehold hereby created heretofore accrued or hereafter to accrue by reason of the location, construction, maintenance or operation of any railway either above or below the ground, or any elevated structure, or any subway or tunnel for such or any

other purpose, and by way of confirmation of the foregoing the Lessee hereby grants all rights to such damages heretofore accrued or hereafter accruing during the term or any extension thereof to the Lessor, to have and to hold to the Lessor and the Lessor's heirs and assigns forever.

Provided also, and these presents are upon this condition, that if the Lessee shall neglect or fail to perform or observe any of the covenants contained in these presents, and on the Lessee's part to be performed or observed or if the estate hereby created shall be taken on execution, or by other process of law, or if any assignment shall be made of the Lessee's property for the benefit of creditors, or if a receiver, guardian, conservator or other similar officer shall be appointed to take charge of any property of, or to wind up the affairs of, the Lessee, then, and in any of the said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance) the Lessor lawfully may, immediately or at any time thereafter, without demand or notice, enter into [fol. 14] and upon the demised premises or any part thereof in the name of the whole and repossess the same as of the Lessor's former estate, and expel the Lessee and those claiming through or under the Lessee and remove the effects of both or either (forcibly, if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon entry as aforesaid this lease shall determine; and the Lessee covenants that in case of such termination, or in case of termination under the provisions of statute by reason of default on the part of the Lessee, the Lessee will pay to the Lessor as damages such a sum as at the time of such termination represents the difference between the rental value of the demised premises and the rent and other payments herein named for the remainder of the said term; and for the more effectual securing to the Lessor of the rent and other payments herein provided, it is agreed as a further condition of this lease that the filing of any petition in bankruptcy or insolvency by or against the Lessee, or either or any of them, shall be deemed to constitute a breach of this lease, and thereupon, *ipso facto* and without entry or other action by the Lessor, this lease shall become and be terminated; and notwithstanding any other provisions of

this lease the Lessor shall forthwith upon such termination be entitled to recover of the Lessee and each of them damages for such breach in an amount equal to the amount of the rent reserved in this lease for the residue of the term hereof, less the fair rental value of the demised premises for the residue of said term.

[fol. 15] The Lessor gives the Lessee permission to install, at Lessee's expense a show case between the entrance of the above premises and #104 Hanover Street, subject to the Rules and Ordinances of the City of Boston, Mass., and any other Public Authorities. The design to be approved by the Lessor.

The Lessor reserves the right to terminate this lease at any time after November 14, 1933, by giving the Lessee six months (6 mos.) notice in writing mailed to or delivered at his last known address, and in case of such termination by the Lessor, he will pay the Lessee a cash bonus of thirty-five hundred (3500) dollars on surrender of the premises to him or his agent.

The provision for the payment of a cash bonus shall be null and void in case the Lessee commits any breach of the terms, conditions or covenants of this lease.

It is agreed and understood that the Lessor and the Shareholders of Real Estate Associates are not to be personally liable hereunder, it being understood that the Trust Estate only is to be found.

It is agreed and understood that the said premises are to be used for the sale of men's hats, etc., but not for the sale of men's clothing.

Where the context so admits, the term "Lessor" shall include agents, heirs, successors and assigns, and the term "Lessee" shall include legal representatives, successors and assigns. The convenants of the Lessee shall be the joint and several obligations of each party signing as Lessee and, when the Lessees are partners, shall be the obligations of the firm and of the individual members thereof.

[fol. 16] In witness whereof, the said parties have hereunto and to a duplicate hereof set their hands and common seal the day and year first above written.

The Trustees of the Real Estate Associates, by Ingersoll Bowditch, Trustee. Sarnoff-Irving Hat Stores, Inc., by Simon Sarnoff, President. (Seal.)

In consideration of the execution of the foregoing lease by the Lessor at the request of the undersigned and of one dollar in hand paid, the undersigned hereby guarantee the punctual payment of the rent and the performance of all the covenants and agreements on the Lessee's part in said lease, demand and notice of default or of non-payment being hereby waived.

Witness — hand and seal the day and year first written in the foregoing lease.

The Trustees of Real Estate Associates, by Ingersoll Bowditch, Trustee. Sarnoff-Irving Hat Stores, Inc., by Simon Sarnoff, President. (Seal.)

At a meeting of the Directors of Sarnoff-Irving Hat Stores, Inc., duly called and held at 419 Lafayette St., [fol. 17] N. Y. C., on Nov. 11, 1925, the following vote was passed; Voted, that Simon Sarnoff be authorized to execute a lease under seal from The Trustees of the Real Estate Ass. of Boston, Mass., upon such terms and with such covenants as to him may seem fit.

Attest:

S. L. Ruzon, Secretary.

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

AMENDED PROOF OF CLAIM

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At the above District in the County of Suffolk, Commonwealth of Massachusetts, on the date hereinafter set forth, came Ingersoll Bowditch and makes oath and says:

I am one of the Trustees of the Real Estate Associates, a voluntary association having its usual place of business [fol. 18] at Boston in said County of Suffolk and said Commonwealth; I reside in said Boston; I am duly authorized

to make this proof of claim on behalf of myself, Stephen W. Sleeper and Francis H. Appleton, Jr., as Trustees of said Real Estate Associates, and as such trustees we are the claimants; the above named bankrupt was at and before the time of the filing of the petition in bankruptcy herein and still is, justly and truly indebted to the claimants in the sum of Ten Thousand Six Hundred Sixty-seven and 68/100 Dollars ($10,667.68); the consideration of said debt is rent of and charges for electricity consumed at the store numbered 102 Hanover Street in said Boston under the terms of Indenture of Lease dated November 7, 1925, annexed to the original proof of claim filed by said Trustees in said bankruptcy matter, and for liquidated damages for breach of covenant contained in said Indenture of Lease, namely:

"and for the more effectual securing to the Lessor of the rent and other payments herein provided, it is agreed as a further condition of this lease that the filing of any petition in bankruptcy or insolvency by or against the Lessee, or either or any of them, shall be deemed to constitute a breach of this lease, and thereupon, ipso facto and without entry or other action by the Lessor, this lease shall become and be terminated; and notwithstanding any other provisions of this lease the lessor shall forthwith upon such termination be entitled to recover of the Lessee and each of them damages for such breach in an amount equal to the amount of the rent reserved in this lease for the residue [fol. 19] of the term hereof, less the fair rental value of the demised premises for the residue of said term."

that the annexed statement marked "Exhibit A" sets forth in full the amount of the claimants' claim for which this proof is made; no part thereof has been paid; there are no offsets or counterclaims thereto; the claimants have not nor has any person for or on behalf of the claimants, or to the deponent's knowledge or belief, had or received, for the use or benefit of the claimants, any security for said debt; no judgment has been rendered therefor or for any part thereof; no note or other evidence of said debt has been received.

In executing and filing this proof of claim, the claimants in no way waive any rights which the claimants may have to reclaim specific assets and expressly reserve such rights.

Trustees of The Real Estate Associates, by Ingersoll Bowditch.

Subscribed, sworn to and acknowledged before me this 29th day of March, 1934, said subscriber being known to me to be the person described in and who signed, swore to and acknowledged the above instrument.

Clarence M. Loud, Notary Public.

[fol. 20] EXHIBIT "A" TO AMENDED PROOF OF CLAIM

Item #1

The item for rents and deficiencies accrued prior to bankruptcy is computed as follows:

Date	Rent due	Period of interest to date of bankruptcy Aug. 27, 1932	Interest at 6%	Total
Mar. 1 to Apr. 27, 1932....	$1,108.34	5 mos. 27 days	$32.24	$1,140.58
Apr. 27 to July 17, 1932....		Receiver occupied premises and duly paid for occupancy.		
July 18 to July 31, 1932....	104.33	13 days	.71	105.04
Aug. 1 to Aug. 27, 1932....	225.00	27 days	1.00	226.00
	$1,437.67		$33.95	$1,471.62

Item #2

The following are deficiencies accruing subsequent to the date of bankruptcy, less the discounts:

Monthly rent reserved under lease, payable in advance.....	$583.33
Fair rental value at $4,000 per year, in monthly installments.....	333.33
Difference monthly.....	$250.00

Due date	Difference between rent and rental value	Period of discount from date of bankruptcy, Aug. 27, 1932		Discount at 6%	Balance-damage
1932.					
Sept. 1.....	$250.00		4 days	$ .18	$ 249.82
Oct. 1.....	250.00	1 mo.	3 "	1.37	248.63
Nov. 1.....	250.00	2 mos.	4 "	2.68	247.32
Dec. 1.....	250.00	3 "	3 "	3.98	246.02
1933.					
Jan. 1.....	250.00	4 "	4 "	5.19	244.81
Feb. 1.....	250.00	5 "	4 "	6.46	243.54
Mar. 1.....	250.00	6 "	1 "	7.61	242.39
Apr. 1.....	250.00	7 "	4 "	8.76	241.24
May 1.....	250.00	8 "	3 "	10.12	239.88
June 1.....	250.00	9 "	4 "	11.39	238.61
July 1.....	250.00	10 "	3 "	12.63	237.37

[fol. 21] Due date	Difference between rent and rental value	Period of discount from date of bankruptcy, Aug. 27, 1932	Discount at 6%	Balance-damage
Aug. 1.....	250.00	11 " 4 "	13.90	236.10
Sept. 1.....	250.00	12 " 4 "	15.18	234.82
Oct. 1.....	250.00	1 yr. 3 "	16.37	233.63
Nov. 1.....	250.00	1 " 1 mo. 4 "	17.68	232.32
Dec. 1.....	250.00	1 " 2 mos. 3 "	18.98	231.02
1934.				
Jan. 1.....	250.00	1 " 3 " 4 "	20.19	229.81
Feb. 1.....	250.00	1 " 4 " 4 "	21.46	228.54
Mar. 1.....	250.00	1 " 5 " 1 "	22.61	227.39
Apr. 1.....	250.00	1 " 6 " 4 "	23.76	226.24
May 1.....	250.00	1 " 7 " 3 "	25.12	224.88
June 1.....	250.00	1 " 8 " 4 "	26.39	223.61
July 1.....	250.00	1 " 9 " 3 "	27.63	222.37
Aug. 1.....	250.00	1 " 10 " 4 "	28.90	221.10
Sept. 1.....	250.00	1 " 11 " 4 "	30.18	219.82
Oct. 1.....	250.00	1 " 12 " 3 "	31.37	218.63
Nov. 1.....	250.00	2 yrs. 4 "	32.68	217.32
Dec. 1.....	250.00	2 " 1 " 3 "	33.98	216.02
1935.				
Jan. 1.....	250.00	2 " 2 " 4 "	35.19	214.81
Feb. 1.....	250.00	2 " 3 " 4 "	36.46	213.54
Mar. 1.....	250.00	2 " 4 " 1 "	37.61	212.39
Apr. 1.....	250.00	2 " 5 " 4 "	38.76	211.24
May 1.....	250.00	2 " 6 " 3 "	40.12	209.88
June 1.....	250.00	2 " 7 " 4 "	41.39	208.61
July 1.....	250.00	2 " 8 " 3 "	42.63	207.37
Aug. 1.....	250.00	2 " 9 " 4 "	43.90	206.10
Sept. 1.....	250.00	2 " 10 " 4 "	45.18	204.82
Oct. 1.....	250.00	2 " 11 " 3 "	46.37	203.63
Nov. 1.....	250.00	2 " 12 " 4 "	47.68	202.32
Dec. 1.....	250.00	3 " 3 "	48.98	201.02
	$10,000.00		$981.02	$9,018.98

Item #3

Charges for electricity furnished to and consumed at said premises from February 20 to April 27, 1932, in accordance with the provisions of said lease	$173.61
Interest at 6% to Aug. 27, 1932	3.47
Total	$177.08

[illegible] ruptcy	$ 1,471.62
Total of Item #2—Deficiencies accruing subsequent to the date of bankruptcy, less discounts	9,018.98
Total of Item #3—Charges for electricity furnished to and consumed at said premises from February 20 to April 27, 1932, and interest	177.08
Grand Total	$10,667.68

[fol. 22] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF HEARING

To Ingersoll Boditch, Esq., % Burt Franklin, Attorney for Real Estate Associates, 500 Fifth Avenue, New York City.

Please take notice that a hearing will be had before Hon. Oscar W. Ehrhorn, Referee in Bankruptcy, at his office, 280 Broadway, Borough of Manhattan, City, County and State of New York, in the Southern District of New York, on the 27th day of March, 1934, at 12:00 noon of said day, on the objection filed by Irving Trust Company, as Trustee in Bankruptcy herein, to the claim of Real Estate Associates, filed in the sum of $4418.04.

Please take further notice that the undersigned will move the Court at that time for an order reducing the said claim of Real Estate Associates from the sum of $4418.04 to the [fol. 23] sum of $1086.27, as a general claim herein.

Dated New York, March 16th, 1934.

Yours, etc., McManus, Ernst & Ernst, Attorneys for Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc. Office & P. O. address: 170 Broadway, Borough of Manhattan, New York City.

IN UNITED STATES DISTRICT COURT

EXTRACT FROM MINUTES OF HEARING

Mr. Melzer: Next is the claim of the Real Estate Associates.

This claim has been filed in the sum of $4,418.04, to which I have filed an objection on the ground that the amount of the indebtedness due was but the sum of $1,086.27.

Here, again, we have a lease, which I think comes within the provisions of the case of the Outfitters Realty Operating Company, Inc., decided by Judge Learned Hand.

The lease provides—the damage clause provides—that upon a breach the landlord may immediately sue for the difference between the re-rental value and the rental reserved for the period involved.

[fol. 24] I understand and I have been told by the Attorneys who appear for the Real Estate Associates that they desire to make an amendment to their claim, and I wish to give them an opportunity now to make their motion.

Mr. Franklin: Since the original filing of this claim we discovered that there is an error in computing the amount to be due. The original claim recites that the lease called for a rental of $5,000 per year. The lease which was attached to the original claim, however, recites that the rental was $7,000 per year. Now, apparently the error was caused by virtue of the fact that the Real Estate Associates had been involuntarily accepting rent at the rate of $5,000 per year, two, three, or four months just prior to the bankruptcy, and when this matter came to the attention of the Trustees of the Real Estate Associates in Boston, upon looking at the records, instead of the lease, they computed their damages at the rate of $5,000 per year instead of $7,000 per year. So, we desire to amend the claim to take up that difference between the $5,000 and $7,000 a year.

Mr. Melzer: Insofar as the question of law is concerned, as to what the amount of the legal indebtedness would have been, if they had originally filed their claim for that amount, I think they could have filed the claim based on the lease reserving a rental of $7,000 per year, as the rent reduction which was agreed upon was one without consideration.

The only question is whether or not your Honor will now permit them, after the expiration of the statutory period, to amend their claim by increasing the amount and chang-

[fol. 25] ing the original claim. That is something which I leave solely to the discretion of your Honor.

Mr. Franklin: Your Honor, the substance of it is in the record; the lease itself is in the record, and everything upon which we base our claim has always been in the record. It is purely a matter of a mistake which we feel is in your power to correct.

Now, in Re Hamilton Automobile Co., 209 Fed. 596, the Court said—Justice requires that the claim should be amended and allowed in the larger amount than that claim

when it was first presented, but for the same claim or subject matter; amendment allowed.

In Re Patterson McDonald Shipbuilding Company, 292 Fed. 759, Circuit Court of Appeals—Courts are liberal in allowing proofs of claim to be amended and amendments should be allowed where there is enough in the original amendment by which to amend.

In Re Brunswick Carpet Cleaning Company, 4 Fed. 514, the court held—In the absence of fraud it was competent for the Court to correct any mere mistake and to allow the proof to stand for any sum that upon examination was found to be actually due.

Mr. Melzer: I do not contest the allegation in the proof of claim that the reasonable rental value of the premises was at the rate of $4,000 per annum.

The Referee: I will reserve decision.

At 12:30 P. M. Hearing closed.

[fol. 26] In United States District Court, Southern District of New York

[Title omitted]

Memorandum of Referee on Objection to Claim of Real Estate Associates and Motion to Amend Proof of Claim

The motion to amend the proof of claim made by the claimants as to compute their damages at the rate of $7,000 per year instead of $5,000 per year is granted.

In re: Hamilton Automobile Co., 209 Fed. 596;
Brunswick Carpet Cleaning Company, 4 Fed. 514;
Paterson McDowell Shipbuilding Company, 292 Fed. 759.

The trustee withdrawing its objections otherwise to the claim, an order may be submitted on notice of settlement in accordance with the above views.

Dated May 9th, 1934.

Oscar W. Ehrhorn, Referee in Bankruptcy.

[fol. 27] In United States District Court, Southern District of New York

[Title omitted]

Order of Referee

A proof of claim having been filed herein by Real Estate Associates, in the sum of $4418.08, and an objection thereto having been filed by Irving Trust Company, as Trustee in Bankruptcy, upon the ground that the amount of the indebtedness to the said claimant was but the sum of $1086.27,

Now, upon reading and filing the said objection to the claim of Real Estate Associates, and the notice bringing on the same for hearing before the undersigned, and due proof of service thereof and the matter having duly come on for hearing, and it appearing that the claimant having filed an amended proof of claim herein for the sum of $10,667.68, and it further appearing that the amount of the indebtedness of the bankrupt to the claimant at the time of the filing of the petition in bankruptcy herein was the sum of $10,667.68, and after hearing McManus, Ernst & Ernst, Lester D. Melzer, of counsel, attorneys for the Trustee in Bankruptcy, in support of the objections to the said claim, and Franklin & Grady, Burt Franklin, of counsel, attorneys for Real Estate Associates, it is

[fol. 28] Ordered that the amended claim filed herein by Real Estate Associates, in the sum of $10,667.68, be and it hereby is allowed as a general claim herein; and it is further

Ordered that the objections filed by the Trustee in Bankruptcy herein, be and they hereby are dismissed.

Dated, New York, May 15th, 1934.

Oscar W. Ehrhorn, Referee in Bankruptcy.

In United States District Court, Southern District of New York

[Title omitted]

Notice of Filing Petition for Review

Sirs: Please take notice that on the 21st day of May, 1934, at 11:00 o'clock A. M., the undersigned will file with

[fol. 29] Hon. Oscar W. Ehrhorn, Referee in Bankruptcy, in charge of the above entitled bankruptcy proceeding, at his office, No. 280 Broadway, Borough of Manhattan, City of New York, a petition for review of the above entitled matter, a copy of which petition is hereto annexed and made a part hereof.

Dated, New York, May 19th, 1934.

Yours, etc., McManus Ernst & Ernst, Attorneys for Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc., Office & P. O. Address: 170 Broadway, Borough of Manhattan, New York City.

To: Franklin & Grady, Esqs., Attorneys for Real Estate Associates, 500 Fifth Avenue, New York City.

[fol. 30] In United States District Court, Southern District of New York

[Title omitted]

Petition for Review

To Honorable Oscar W. Ehrhorn, Referee in Bankruptcy:

The petition of Irving Trust Company respectfully represents:

First: That it is the duly qualified and acting Trustee in Bankruptcy herein.

Second: That a proof of claim was filed herein by Real Estate Associates, for the sum of $4418.08, and your petitioner filed an objection to the said claim, upon the ground that the amount of the indebtedness owing to the said claimant was but the sum of $1086.27.

Third: The said Real Estate Associates subsequently filed an amended proof of claim for the sum of $10,667.68, which amendment was allowed by order of Hon. Oscar W. Ehrhorn, Referee in Bankruptcy, dated May 15th, 1934, which order also dismissed the objections filed by your petitioner, as Trustee in Bankruptcy, for the said claim.

[fol. 31] Fourth: The said proof of claim was based upon a lease entered into between Real Estate Associates, the

said claimant, as landlord, and the above named bankrupt, as tenant, and the amount of $10,667.68 represents the amounts due the claimant by the bankrupt for past due rent at the time of the filing of the bankruptcy petition, plus the value at the time of the filing of the bankruptcy petition of the difference between the rents reserved in the said lease to the end of the term, and the reasonable re-rental value of the premises during that period.

Fifth: The actual amount due at the time of the filing of the petition in bankruptcy for past due rent was the sum of $1086.27. Your petitioner filed an objection to the claim upon the ground that the additional item representing the difference between the rents reserved to the end of the term, pursuant to the said lease, and the actual rerental value of the said premises, did not represent a provable claim in bankruptcy.

Sixth: A hearing was duly had on the objection to the said claim, and the objections of the Trustee were dismissed and the claim allowed by order of Hon. Oscar W. Ehrhorn, Referee in Bankruptcy, dated May 15th, 1934, the said Referee in Bankruptcy, having allowed the said claim upon the authority of Outfitters Operating Realty Co., Inc., Bankrupt, A. W. Perry, Appellant, against Irving Trust Company, Trustee, Appellee, decided by the Circuit Court of Appeals for the Second Circuit.

Seventh: Since the rendition of the decision in this mat-
[fol. 32] ter by Referee Ehrhorn and the entry of the said order, a writ of certiorari has been granted by the United States Supreme Court in the said case of Outfitters Operating Realty Co., Inc., Bankrupt, A. W. Perry, Appellant, against Irving Trust Company, Trustee, Appellee.

Eighth: In view of the granting of the said writ of certiorari by the United States Supreme Court, your petitioner is of the opinion that the United States Supreme Court will reverse the decision of the Circuit Court of Appeals in said case, and that the said Referee in Bankruptcy erred in dismissing the objections filed by your petitioner to the claim of Real Estate Associates, and allowing the said claim in the sum of $10,667.68.

Ninth: That annexed hereto is a copy of the said order entered by Hon. Oscar W. Ehrhorn, Referee in Bank-

ruptcy, dated May 15th, 1934, which your petitioner believes was erroneously granted.

Wherefore, your petitioner respectfully prays that the said order be reviewed and reversed, and that the claim of Real Estate Associates be reduced to the sum of $1086.27, and allowed as a general claim in said sum, and for such other and further relief as to this Court may seem just and proper in the premises, for all of which no previous application has been made.

And your petitioner will ever pray, etc.

Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc., by (Signed) Joseph T. Stearns, Assistant Secretary.

[fols. 33 & 34] *Duly sworn to by Joseph T. Stearns. Jurat omitted in printing.*

Copy of referee's order omitted, printed side page, 27 ante.

[fol. 35] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

REFEREE'S CERTIFICATE ON PETITION FOR REVIEW OF OBJECTION TO CLAIM OF REAL ESTATE ASSOCIATES

To the Honorable the Judges, etc.:

I, Oscar W. Ehrhorn, Referee in Bankruptcy in charge of the above proceeding, do hereby certify:

That in the course of such proceeding, an objection was made to the claim of Real Estate Associates by the Trustee in Bankruptcy, as a result of which a hearing was had and an order was enteerd allowing the claim in the sum of Ten Thousand Six Hundred Sixty-seven and 68/100 Dollars (10,667.68).

That thereafter, the Trusteee in Bankruptcy, feeling aggrieved thereat, has filed with me its petition for review, which was granted.

That the errors complained of are set forth in such petition for review.

Pursuant to the provisions of General Order XXVII, I hereby certify that the question presented is whether the Referee was right in allowing the claim in the amount of [fol. 36] Ten Thousand Six Hundred Sixty-seven and 68/100 Dollars ($10,667.68).

The undersigned Referee respectfully refers to his memorandum herein, dated the ninth day of May, 1934, and to the minutes on which said order was made.

From the testimony it appears (S. M. pp. 7-8) as stated by Lester D. Melzer, Esq., of counsel for Messrs. McManus, Ernst & Ernst, attorneys for the Trustee, that the only question submitted to the undersigned was whether or not, after the expiration of the statutory period, the claimant could amend its claim by increasing the amount. No question was raised as to the fact that under the decision of Outfitters Operating Realty Co., Inc., Bankrupt, A. W. Perry, Appellant v. Irving Trust Company, Appellee (C. C. A. 2d Circuit) the claimant was entitled to the sum in which the claim was allowed by the undersigned.

No question is raised by the petition for review to the amendment of the proof of claim, and the sole basis for objecting to the allowance of the claim in the amount stated at this time is because it appears now that a Writ of Certiorari has been granted by the United States Superior Court in the said case of Outfitters Operating Realty Co., Inc., Bankrupt, A. W. Perry, Appellant v. Irving Trust Company, Appellee.

I hand up herewith for the information of the Judges the following papers:

1. Proof of Claim $4,418.08, filed September 10, 1932 (original lease attached);

2. Notice of objection by Trustee, filed May 2, 1933;

[fol. 37] 3. Notices of hearing filed October 17, 1933 and March 20, 1934;

4. Stenographers' minutes, pages 7-9, hearing April 5, 1934;

5. Amended proof of claim, Real Estate Associates, $10,667.68, filed April 19, 1934;

6. Memorandum of Referee, dated May 9, 1934 (allowing amendment);

7. Order allowing claim at $10,667.68, dated May 15, 1934;

8. Petition for review by Trustee. filed May 21, 1934.

Pursuant to the practice adopted, I direct that the hearing on this certificate be had before the Honorable District Judge holding the Bankruptcy Part on Wednesday, June 13, 1934, at 10:30 A. M.

I certify that copies of this certificate have been mailed to the following parties:

Messrs. McManus, Ernst & Ernst, 170 Broadway, New York, New York, Attorneys for Trustee.

Messrs. Franklin & Grady, 500 Fifth Avenue, New York, New York, Attorneys for Real Estate Associates.

Dated, New York, June 5, 1934.

Oscar W. Ehrhorn, Referee in Bankruptcy.

[fol. 38] IN UNITED STATES DISTRICT COURT

MEMORANDUM, COXE, D. J.

At the argument of this motion it was agreed by all counsel that the case was ruled by Outfitters Operating Realty Co. vs. Irving, recently decided by the C. C. A. in this Circuit (Certiorari granted by the Supreme Court) and the petition to review is therefore denied so that the question may, if possible, be presented to the Supreme Court at the time the Outfitters case is heard.

Alfred C. Coxe, D. J.

June 13, 1934.

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. 55118

Re Claim of Real Associates

In the Matter of SARNOFF-IRVING HAT STORES, INC., Bankrupt

ORDER APPEALED FROM—June 14, 1934

A motion having been duly made upon behalf of Ingersoll Bowditch, Stephen W. Sleeper and Francis H. Apple-

[fol. 39] ton, Jr., as Trustees of the Real Estate Associates, for an order dismissing the petition of Irving Trust Company, as Trustee in Bankruptcy herein, verified the 19th day of May, 1934, and filed in the office of Honorable Oscar W. Ehrhorn, Referee in Bankruptcy, on the 21st day of May, 1934, for a review of the order of the said Referee, dated May 15, 1934, allowing the amended claim filed herein by Real Estate Associates, in the sum of $10,667.68, as a general claim herein, and dismissing the objections filed thereto by Irving Trust Company, as Trustee in Bankruptcy herein, and after hearing Franklin & Grady, Burt Franklin, of counsel for Ingersoll Bowditch, Stephen W. Sleeper and Francis H. Appleton, Jr., as Trustees of the Real Estate Associates, the claimant in support of the said motion, and McManus, Ernst & Ernst, attorneys for Irving Trust Company, as Trustee in Bankruptcy, Lester D. Melzer, of counsel, in opposition thereto, it is, on motion of Franklin & Grady, attorneys for Ingersoll Bowditch, Stephen W. Sleeper and Francis H. Appleton, Jr., as Trustees of the Real Estate Associates,

Ordered that said order entered herein by Honorable Oscar W. Ehrhorn, Referee in Bankruptcy, dated May 15th, 1934, be and it hereby is in all respects approved and confirmed; and it is further

Ordered that said petition filed herein on May 21st, 1934, for a review of said order, be and it hereby is denied.

Alfred C. Coxe, U. S. D. J.

[fol. 40] Notice of settlement of the foregoing order is hereby waived.

McManus, Ernst & Ernst, Attorneys for Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc.

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF APPEAL

SIRS: Please take notice that the undersigned hereby appeals to the United States Circuit Court of Appeals for the

Second Circuit, from the order entered in the office of the Clerk of the United States District Court for the Southern District of New York, on the 14th day of June, 1934, confirming the order of Honorable Oscar W. Ehrhorn, Referee in Bankruptcy, dated May 15th, 1934, allowing the amended proof of claim filed herein by the Real Estate Associates, [fol. 41] in the sum of $10,667.68, and dismissing the objections filed thereto by Irving Trust Company, as Trustee in Bankruptcy herein, and from each and every part of said order.

Dated, New York, June 14th, 1934.

Yours, etc., Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc., Petitioner, by McManus, Ernst & Ernst, Attorneys for Petitioner, Office & Post Office Address: 170 Broadway, Borough of Manhattan, New York City.

To Franklin & Grady, Esqs., Attorneys for Real Estate Associates, Claimant, 500 Fifth Avenue, New York City.

[fol. 42] In United States District Court, Southern District of New York

[Title omitted]

Petition for Appeal

Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc., feeling itself aggrieved by the order entered in the above entitled proceeding in the office of the Clerk of this Court, on the 14th day of June, 1934, confirming the order of Honorable Oscar W. Ehrhorn, Referee in Bankruptcy, allowing the amended proof of claim filed herein by the Real Estate Associates, in the sum of $10,667.68, and dismissing the objections filed thereto by Irving Trust Company, as Trustee in Bankruptcy herein, does hereby appeal from said order and from each and every part thereof, to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and prays for an order allowing the said petitioner to prosecute said appeal, and that a transcript of the

record and proceedings on which said order is made may be duly authenticated and sent to the United States Circuit Court of Appeals for the Second Circuit, and that a citation [fol. 43] be issued directed to the Real Estate Associates commanding them to appear before the United States Circuit Court of Appeals for the Second Circuit, to do and receive what may appertain in justice to be done in the premises.

Dated, New York, June 14th, 1934.

Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc., by McManus, Ernst & Ernst, Attorneys for Petitioner, Office & Post Office Address: 170 Broadway, Borough of Manhattan, New York City.

IN UNITED STATES DISTRICT COURT

ALLOWANCE OF APPEAL

The foregoing appeal from the order entered herein on the 14th day of June, 1934, be and the same hereby is allowed.

Dated, New York, June 14th, 1934.

Alfred C. Coxe, U. S. D. J.

[fol. 44] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS

Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc., feeling itself aggrieved by the order entered herein on June 14th, 1934, now appears by its attorneys and presents with its notice of appeal, the following assignment of errors:

First: That the Court erred in confirming the order of Honorable Oscar W. Ehrhorn, Referee, in Bankruptcy, dated March 15th, 1934, allowing the amended proof of

claim filed herein by the Real Estate Associates, in the sum of $10,667.68.

Second: That the Court erred in confirming the order of Honorable Oscar W. Ehrhorn, Referee in Bankruptcy, dated May 15th, 1934, dismissing the objections filed by Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc., to the proof of claim of the Real Estate Associates.

Third: That said order was and is erroneous, in that it was and is contrary to the law.

[fols. 45 & 46] Wherefore, petitioner prays that the said order be reversed, and that the District Court of the United States for the Southern District of New York be directed to enter an order reversing its order and reversing the decision of the Referee, and disallowing the amended proof of claim filed herein by Real Estate Associates.

Dated New York, June 14th, 1934.

Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc., Petitioner, by McManus, Ernst & Ernst, Attorneys for Petitioner. Office & Post Office address: 170 Broadway, Borough of Manhattan, New York City.

Citation in usual form omitted in printing.

[fol. 47] In United States District Court, Southern District of New York

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated June 20, 1934.

McManus, Ernst & Ernst, Attorneys for Appellant.
Franklin & Grady, Attorneys for Appellee.

[fol. 48] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 49] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1933

No. 490

Argued June 20, 1934. Decided June 20, 1934

In the Matter of SARNOFF-IRVING HAT STORES, INC., Bankrupt; IRVING TRUST COMPANY, as Trustee, etc., Appellant

Appeal from the District Court of the United States for the Southern District of New York

Before L. Hand and Swan and A. N. Hand, Circuit Judges

DECISION

Order affirmed in open court.

[fol. 50] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

In the Matter of SARNOFF-IRVING HAT STORES, INC., Bankrupt; IRVING TRUST COMPANY, as Trustee, etc., Appellant

ORDER FOR MANDATE—Filed June 27, 1934

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 51] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 52] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 22, on Monday, November 5th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,801. U. S. Circuit Court of Appeals, Second Circuit. Term No. 173. Irving Trust Company, as Trustee in Bankruptcy of Sarnoff-Irving Hat Stores, Inc., Bankrupt, Petitioner, vs. Ingersoll Bowditch, Stephen W. Sleeper and Francis H. Appleton, Jr., Trustees of the Real Estate Associates. Petition for a writ of certiorari and exhibit thereto. Filed July 12, 1934. File No. 173, O. T., 1934.